



COUNTY COUNCIL OF HARFORD COUNTY, MARYLAND

BILLY BONIFACE
President

DION F. GUTHRIE
District A

CHAD R. SHRODES
District D

VERONICA "RONI" CHENOWITH
District B

RICHARD C. SLUTZKY
District E

JAMES V. McMAHAN
District C

MARY ANN LISANTI
District F

FINAL DECISION OF THE COUNTY COUNCIL/BOARD OF APPEALS

RE: Zoning Appeal Case No. 5555

APPLICANTS: Krishna & Savitri Pollard

LOCATION: 2018 Mountain Road, Joppa

**REQUEST: Interpretation of Harford County Code Section
267-39C(7)(g)**

**WHEREAS, the County Council/Board of Appeals has reviewed the file in this matter;
and**

**WHEREAS, the County Council/Board of Appeals has reviewed the record developed
by the Hearing Examiner and has considered the recommendation of the Hearing Examiner;
and**

**WHEREAS, the County Council/Board of Appeals has heard all final arguments based
on the evidence in the record; and**

**WHEREAS, the Hearing Examiner's found, in a decision, dated October 17, 2007, that
Section 267-39C(7)(g) was applicable to a request for a special exception to allow a motor
vehicle repair shop in the Agricultural District.**

**NOW, THEREFORE, BE IT RESOLVED that the Harford County Council/Board of
Appeals, by affirmative vote of 7-0, rejects the Hearing Examiner's recommended decision,
and finds that Section 267-39C(7)(g) does not apply to a request for a special exception to
allow a motor vehicle repair shop in the Agricultural District, based upon the findings of fact
and conclusions of law contained in the decision dated March 20, 2007.**



APPLICANTS:
Krishna and Savitri Pollard

BEFORE THE

HARFORD COUNTY

REQUEST: An interpretation of Section
267-39C(7)(g) of the Harford County Code.

ZONING BOARD OF APPEALS

FINAL ARGUMENT DATE: March 6, 2007

Case No. 5555

**DECISION OF THE
ZONING BOARD OF APPEALS**

APPLICANT: Krishna Dave Pollard

CO-APPLICANT: Savitri M. Pollard

LOCATION: 2018 Mountain Road, Joppa
Tax Map: 60 / Grid: 3F / Parcel: 78
First (1st) Election District

ZONING: AG / Agricultural

REQUEST: An interpretation of Section 267-39(C)(7)(g) and a special exception, pursuant to Section 267-53(D)(3) of the Harford County Code, to allow a motor vehicle repair shop in the Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

The Applicants requested bifurcation of the issues in the case so as to receive a ruling on a legal issue before proceeding to the more factually based determination of the special exception. The legal issue upon which the Applicants seek a ruling is whether Code Section 267-39C(7)(g) is applicable to the underlying requested special exception. This Section provides as follows:

- (7) *Motor vehicle filling or service stations and repair shops, in the B2 and B3 Districts, provided that:*
 - (g) *A motor vehicle filling or service station shall only be permitted if all properties adjacent to the proposed use are served by a public water supply.*

The use proposed for the subject property is a motor vehicle repair shop only and not a motor vehicle filling or service station. The subject property is not adjacent to properties which are served by a public water supply.

Case No. 5555 – Krishna & Savitri Pollard

The Applicants seek an interpretation that the requirement of being adjacent to properties served by public water is not applicable to a request for a motor vehicle repair shop special exception. If it is, in fact, found to be applicable, then the Applicants cannot, presumably, proceed with the motor vehicle repair shop special exception request. Alternatively, if this requirement is not applicable then it is presumed that they will proceed with the request for a special exception.

Legal argument only was presented at the hearing before the Zoning Examiner and the Board of Appeals.

Applicants assert that a 'motor vehicle repair shop' is the same as 'automotive repair shop', as defined in Section 267-4 of the Harford County Zoning Code, but that a motor vehicle repair shop is separate and distinct from a motor vehicle filling or service station. The Applicants' argue that subsection (g) at Section 267-39(C)(7), by its plain language, applies only to motor vehicle filling or service stations. The language of this section does not include "and repair shops". Accordingly, Applicants argue that it is not applicable to their proposed use, which is a repair shop only. A significant difference between a "motor vehicle repair shop" and a "motor vehicle filling or service station" is that only the latter have gasoline pumps.

In support of their position the Applicants presented a certified copy of Harford County Council Bill 05-23, introduced on May 10, 2005, and effective on August 29, 2005. That legislation had as its purpose a revision of the Harford County Development Regulations so as to permit;

"... motor vehicle filling or service stations to be located on parcels only if all properties adjacent to the proposed use are served by a public water supply; and generally relating to motor vehicle filling and service stations."

See preamble to Council Bill 05-23.

Applicants also introduced Minutes of the Public Hearing on Bill 05-23. In the Minutes Council Member Cassilly is reported as stating;

"... no retail gas station should be constructed on any property that is not served by public water or next to a lot that is not served by public water. This is to protect the ground water. The County learned last summer of the MTBE problem in the Fallston area and does not want a repeat of the incident in the future."

The Harford County Department of Planning and Zoning does not support the interpretation requested by the Applicants. The Department's opinion contained in the Staff Report is:

Case No. 5555 – Krishna & Savitri Pollard

“The Department believes that all requirements of Section 267-39(C)(7) apply to Motor Vehicle Repair Shops in the AG and B1 Districts. The language in Section 267-53D(3)(b) is clear that motor vehicle repair shops must meet all the requirements of Section 267-39(C)(7) for service stations and repair shops in the B2 and B3 Districts. If the County Council wished to exclude certain requirements they could have deleted the words service stations from Section 267-53D(3)(b) or listed the specific requirements under 267-39(C)(7) which would apply to motor vehicle repair shops.” (emphasis in original)

APPLICABLE LAW:

The Applicants have requested a special exception to Section 267-53(D)(3) of the Harford County Code, which states:

“(3) Motor vehicle repair shops. These uses may be granted in the AG and B1 Districts, provided that:

- (a) A buffer yard at least 10 feet wide shall be provided along any adjacent road right of way or adjacent residential lot.*
- (b) The requirements of Section 267-39(C)(7) of this chapter for service stations and repair shops in the B2 and B3 Districts shall be met.”*
- (c) Unless Board approval is granted, accessory buildings and outdoor storage of vehicles, tires and equipment shall be prohibited.*
- (d) The operator of the shop shall maintain a log of all vehicles repaired. For each vehicle, the log shall include the vehicle identification number and a description of the vehicle and identify the dates the vehicle arrived and was removed. The log shall be available for inspection during normal business hours. If no log exists, it shall be assumed for the purposes of 267-39C(7)(f) that each vehicle has been stored on the property for 90 days.*
- (e) The rental or storage of trailers, boats and trucks shall be prohibited.*
- (f) Proposed outdoor storage areas and refuse storage areas shall be fenced or screened from adjacent properties and shown on the site plan submitted for Board approval.*

Case No. 5555 – Krishna & Savitri Pollard

- (g) *Materials, textures, colors and designs of fences, walls and screening shall be compatible with the on-site development, adjacent properties, and the neighborhood. When a wall is required, a planting strip at least 5-feet wide shall be provided also and shall include trees and shrubs that are at least 2-feet high when planted and that may be expected to form a year-round dense screen within 3-years. The location and species of trees and shrubs used for screening shall be chosen with consideration for the size of the trees and shrubs at maturity. Fences, walls, screening and planting strips shall be located so that they do not constitute sight obstructions for the drivers of vehicles entering or exiting the parcel or any adjacent lot or parcel.*
- (h) *The fumes, odors and noise from the vehicle-related work shall be minimized.*
- (i) *A minimum parcel area of 1-acre shall be required.*
- (j) *In the AG District, the use shall be operated by the resident of the property."*

The Applicants during this bifurcated phase of their case request an interpretation that Section 267-39C(7)(g) of the Harford County Code does not apply to their special exception request. Section 267-39C(7) provides:

- "(7) Motor vehicle filling or service stations and repair shops, in the B2 and B3 Districts, provided that:*
- (a) Pumps shall be at least twenty-five (25) feet from all road rights-of-way.*
- (b) All portions of the lot used for storage or service of motor vehicles shall be paved with a hard surface.*
- (c) No obstructions which limit visibility at intersections or driveways shall be permitted.*
- (d) Lightning shall be designed and controlled so that any light shall be shaded, shielded or directed so that the light intensity or brightness shall not adversely affect the operation of vehicles or reflect into residential buildings.*

Case No. 5555 – Krishna & Savitri Pollard

- (e) *No motor vehicle filling or service station driveway shall be located less than four hundred (400) feet from the property line of any public or private institutional use, including schools, houses of worship, hospitals, parks or playgrounds.*
- (f) *Vehicles, except those vehicles used in the operation of the business, may not be stored on the property for more than ninety (90) days.*
- (g) *A motor vehicle filling or service station shall only be permitted if all properties adjacent to the proposed use are served by a public water supply."*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

Applicants' attorney proffers that the Applicant Krishna Dave Pollard, who is employed as a body and fender technician, wishes to construct a 3,000 square foot shop on the subject property in order to do automotive restoration work.

The Applicants, of course, will be required to meet the special exception standards of motor vehicle repair shops contained at Section 267-53D(3) for such a repair facility.

As indicated above, subsection (b) of that section states as follows:

"The requirements of Section 267-39C(7) of this chapter for service stations and repair shops in the B2 and B3 Districts shall be met."

It is the position of the Department of Planning and Zoning that a motor vehicle repair shop request shall meet both Sections 267-53D(3) and 267-39C(7) if they are to be in compliance with all applicable statutory criteria. At the hearing before the Zoning Hearing Examiner, no suggestion was made by the Department of Planning and Zoning that these Sections are not totally applicable and have not been applied to all motor vehicle repair shop special exceptions in the past.

It is particularly noteworthy to this Board that the Hearing Examiner inquired regarding the Department of Planning and Zoning's history of interpretation over the years. More particularly, the Hearing Examiner inquired into the Department of Planning and Zoning's prior interpretation of Section 267-39C(7)(e) which provides that *no motor vehicle filling or service station driveway shall be located less than four hundred (400) feet from the property line of any public or private institutional use, including schools, houses of worship, hospitals, parks or playgrounds*. While the representative of the Department of Planning and Zoning was somewhat vague in his responses, it appears that it was his position the Department required compliance with Section 267-39C(7)(e) for all previous repair shop approvals. This Board respectfully disagrees with this conclusion and finds same to be in error.

Case No. 5555 – Krishna & Savitri Pollard

This Board is cognizant of previous Board of Appeals cases in which a different position than that advocated by the Department of Planning and Zoning in this matter was taken. In Board of Appeals Case No. 5447, the Zoning Hearing Examiner's decision which was adopted as the decision of this Board, found that 267-39C(7)(e) was not applicable to the requested motor vehicle repair shop. Moreover, the Staff Report of the Department of Planning and Zoning contained in the record of Appeal Case No. 5447 also opines that 267-39C(7)(e) is not applicable to the requested special exception for a motor vehicle repair shop in an agricultural district.

Similarly, in Board of Appeals Case No. 5391 which was another request for a special exception to allow a motor vehicle repair shop in an agricultural district, it was found that 267-39C(7)(e) was not applicable. Finally, in Board of Appeals Case No. 5468 in which a requested special exception to operate a motor vehicle repair shop in an agricultural district was denied, the Department of Planning and Zoning in their Staff Report again took the position that 267-39C(7)(e) was not applicable to the requested motor vehicle repair shop.

As noted during the proceedings before the Hearing Examiner, in 2005 the Harford County Council amended Section 267-39C(7) to add Section (g) which provided that *a motor vehicle filling or service station shall only be permitted if all properties adjacent to the proposed use are served by a public water supply*. As the public hearing on this bill noted, this legislation was proposed and passed in an attempt to prevent MTBE contaminates from leaching into the soil in areas serviced by wells rather than public water. The legislation as drafted specifically limited its application to motor vehicle filling or service stations and excluded repair shops.

Had the County Council intended for the requirement of public water to also apply to repair shops, then the language contained in Section 267-39C(7)(g) limiting its application to a motor vehicle filling or service station would be unnecessary and therefore would constitute surplusage. The Applicants noted that their proposal was for a repair shop only and therefore requirements related solely to service stations do not apply. Moreover, the Applicants' position also urged that the adoption of Section 267-39C(7)(g) was to prevent possible MTBE hazards and the requested repair shop would not generate a hazard of this nature.

The Zoning Hearing Examiner found that the statute was clear and not ambiguous and therefore all conditions for a filling station special exception must also be applied to a motor vehicle repair facility. This Board respectfully disagrees with this conclusion. The principles of statutory construction obligate us to construe the statute as a whole, so that all provisions are considered together and, to the extent possible, reconciled and harmonized. *Curran v. Price*, 334 Md. 149, 172 (1994); *State v. Crescent Cities Jaycees Foundat., Inc.*, 330 Md. 460, 468 (1993).

Moreover, where appropriate, a provision should be interpreted "in the context of the entire statutory scheme of which it is a part." *Gordon Family Partnership, v. Gar On JER et al*; 348 Md. 129, 138 (1997); *Mazor v. State Dep't of Correction*, 279 Md. 355, 361 (1977).

Case No. 5555 – Krishna & Savitri Pollard

Moreover, if reasonably possible, a statute should be interpreted “so that no word, phrase, clause, or sentence is rendered surplusage or meaningless,” *Mazor v. State Dep’t of Correction*, 279 Md. 355, 360 (1977). or “superfluous or redundant.” *Blondell v. Baltimore City Police Dep’t*, 341 Md. 680, 691(1996); see also *Eng’g Mgmt. Servs., Inc. v. Md. State Highway Admin.*, 375 Md. 211, 224 (2003); *Motor Vehicle Admin. v. Lytle*, 374 Md. 37, 61-2 (2003).

Finally, in construing the subject statutory provision, we may also consider “the consequences resulting from one meaning rather than another, and adopt that construction which avoids an illogical or unreasonable result, or one which is inconsistent with common sense.” *Chesapeake Charter, Inc. v. Anne Arundel County Bd. of Educ.*, 358 Md. 129, 135 (2000).

Applying the above precepts to the instant case leads us to the conclusion that Section 267-39C(7)(g) [or for that matter 267-39C(7)(e)] does not apply to the request for a special exception for a repair shop in an agricultural district. A review of Section 267-39C(7) in its entirety leads us to the conclusion that the language in subsection (g) limits its applicability to only motor vehicle filling or service stations. While the Board is cognizant that Section 267-53D(3)(b) states that the requirements of 267-39C(7) for service stations and repair shops in the B2 and B3 districts shall be met in order to approve a special exception for motor vehicle repair shop in an agricultural district, we believe that, by implication, the “common sense” interpretation dictates that only the applicable sections of 267-39C(7) must be met. We believe that to interpret otherwise would end up with a result that would both be illogical and unreasonable and moreover, would be inconsistent with common sense. Moreover, it would relegate the subject limiting language to the ‘scrapheap of surplusage.’

CONCLUSION:

For the above reasons, it is held that the applicant’s requested interpretation be approved.

COUNTY COUNCIL OF HARFORD COUNTY



Billy Boniface
President of the Council

March 20, 2007

Final decision of the County Council/Board of Appeals may be appealed with the required fees to the Circuit Court for Harford County on or before APRIL 19, 2007. Filing instructions may be obtained from the Clerk of the Circuit Court.